The appeal is dismissed with costs here and the court below.

Appeal dismissed.

Solicitors: *E. Ramasamy & Co.*

MOK HIN WAH & ORS. v. UNITED MALAYAN BANKING CORP. BHD.

[S.C. (Salleh Abas L.P., Seah & Syed Agil Barakbah S.C. JJ.) June 10 & 25, 1987]

[Kuala Lumpur - Supreme Court Civil Appeal No. 490 of 1986]

Contract – Guarantee – Demand for payment – Whether carbon copies of demand meant for borrower sent to guarantors constitute proper demand.

Banking – Loan – Guarantee – Demand for payment – Whether carbon copies of demand meant for borrower sent to guarantors constitute proper demand.

The plaintiff-respondent had brought a claim for money lent to the first defendant under overdraft facilities and interest thereon. The loans were guaranteed under continuing guarantees and indemnities by the other five defendants for the payment of all money owing by the first defendant still remaining unpaid on the general balance of the first defendant's account with the plaintiff. When the defendants failed to pay the stated sum the plaintiff filed a writ and statement of claim against them. Judgment was given for the plaintiff and the defendants-appellants appealed. The main issue in the appeal was whether the notice sent by the plaintiff was a proper demand under the guarantees. It was conceded that all the guarantors received carbon copies of the notice of demand meant for the first defendant.

Held, allowing the appeal: (1) the notice of demand in this case was made only to the first defendant and not to any of the six guarantors including the four appellants;

(2) since bank guarantees invariably specify that the liability of the guarantor is to pay on demand, the words are not devoid of meaning or effect but make the demand a condition precedent to suing the guarantor.

Cases referred to:

(1) *United Prime Corporation Bhd.* v. *Q-Built Construction (M) Sdn. Bhd. & Ors.* K.L. Civil Suit No. 2049 of 1985, unreported.

(2) *Bradford Old Bank Ltd.* v. *Sutcliffe* [1918] 2 K.B. 833, 849.

SUPREME COURT.

James Puthucheary (*Lambert Rasa Ratnam* with him) for the appellant.

A.D. Rajah for the respondent.

Cur. Adv. Vult.

Salleh Abas L.P. (delivering the Judgment of the Court): We heard this appeal on June 10, 1987, and allowed it with costs. We now give our reasons for doing so.

This was a claim in the High Court Kuala Lumpur by UMBC, the plaintiff, for money lent to the first defendant from time to time under overdraft facilities and interest thereon. The loans were guaranteed under continuing guarantees and indemnities by the other five defendants for due payments of all money owing by the first defendant still remaining unpaid on the general balance of the first defendant's account with the plaintiff. The several guarantees and indemnities and their amounts are particularised at paragraph 4A & B of the statement of claim. When the defendants failed to pay the stated sum the plaintiff filed a writ and a statement of claim against them.

The main issue in this appeal is whether the notice sent by the plaintiff was a proper demand under the guarantees. It was conceded that all the guarantors received carbon copies of the notice of demand meant for the first defendant. The notice reads as follows:

"PLEASE TAKE NOTICE that unless the total sum of $307,458.57 (which was subsequently corrected to $332,716.36: see p. 73) plus interest stated above is fully paid within SEVEN (7) days from the date hereof legal proceedings will be instituted against you *and your above guarantors* without further reference to you or to your above guarantors." (emphasis added).

The notice of demand was therefore made only to the first defendant and not to any of the six guarantors including the four appellants. In our opinion, the law is very clear on this point. The respondent as creditor must prove a real demand by sending actual notice of demand to the respective guarantors. Sending a carbon copy of it as in this case is not enough. It is also not sufficient to send carbon copies of the notice meant for the borrower as in the case of *United Prime Corporation Berhad* v. *Q-Built Construction (M) Sdn. Bhd. & Ors.*[1] with words "This is a demand upon you" written against the names of the guarantors appearing at

the bottom of the notice. The reason is that in the letters of guarantee the provisions about demand are a real stipulation and not mere words. Under clause 1, the guarantors are to pay "on demand all money which now is or may during the continuance of the agreement be owing to you from the Customer(s) . . . . . ". Clause 4 requires the sum guaranteed or any balance thereof to be paid with interest from the date of demand for the payment thereof. It is also stipulated at clause 11 that any demand in relation to matters aforesaid may be effectively given or made by any officer of the Bank, either served personally on the guarantors, or sent by post to or at their last known place of business. (See *Bradford Old Bank Ltd.* v. *Sutcliffe*[2]). Since bank guarantees invariably specify that the liability of the guarantor is to pay on demand, the words are not devoid of meaning or effect but make the demand a condition precedent to suing the guarantor. (See *Paget's* Law of Banking, 9th Edition, 522).

For the above reasons, we hold that no proper demand was made by the respondent from the appellants, and accordingly allowed the appeal with costs.

Appeal allowed.

Solicitors: *Skrine & Co.; Lovelace & Hastings.*

TRUSTEES OF LEONG SAN TONG KHOO KONGSI (PENANG) REGISTERED & ORS. v. POH SWEE SIANG

[S.C. (G. Seah, Hashim Yeop A. Sani & Wan Hamzah S.C. JJ.) September 29, December 1, 2 & 3 1986 & April 27 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 117 of 1986]

Landlord and Tenant – Tenancy over vegetable plots and over premises – Whether premises controlled premises – Termination of tenancy – Whether notices to quit valid – Whether any estoppel created – Tenant a trespasser after expiry of notice to quit – Common law remedy of self-help available to landlord – Use of no more force than is reasonably necessary – Damages for any injury caused – Whether exemplary damages may be ordered – Counterclaim by landlord for damages – Cross-appeal – Costs – Specific Relief Act, 1950, ss. 7 and 8 – Control of Rent Act 1966 – Civil Law Act, 1956, s.28(4)(a).

The first appellants were the registered proprietors of the Thean Teik Estate in Penang. They had executed an agreement with the second appellant a housing developer to build houses on the estate for sale to the public. The third appellants were the contractors of the housing developer. The land concerned had been occupied by farmers who claimed to be tenants of the vegetable plots and the respondent was one of them. In the agreement between the trustees of the estate of Thean Teik and the developer it was agreed that the developer shall have the right to enter upon the land to carry out site preparation and survey and all other matters connected thereto including the eviction of squatters which shall be done at the developer's own expenses. Any compensation payable to the squatters was to be borne entirely by the developer but the trustees of the estate would assist the developer in legal proceedings against the squatters. The trustees had given two notices to quit to the respondent, one to quit the land and the other to quit and give up possession of the house on the land.

The respondent testified that a group of people from the second appellant's company came to the land on the October 27, 1982 and they started to demolish the vegetable plots which they unearthed and flattened. In the process they also destroyed pipes for watering the vegetable. The following day the people came again and the work of flattening the vegetable plots continued. According to the respondent three acres of his vegetable plots were flattened where he had planted brinjals which were fruiting but not yet harvested.

In the action brought by the respondent he alleged that he had been a registered tenant of approximately six acres of land in the estate since May 22, 1950, when he bought a farm and house on the estate. He became a tenant upon payment of a sum of $5/- whereupon he was registered by the trustees of the estate as a tenant. He also alleged that the first appellant orally promised him that he could stay on the land as long as he continued to pay the rent to the first appellant and he was induced into believing that he could develop the estate as he saw fit. Finally he claimed that the notices to quit to terminate the tenancy of the vegetable plots and the tenancy of the land on which the house stands are invalid and ineffective and that he is at all material times entitled to possession of the said land.

There was a lengthy trial before the learned Judge which lasted for 25 days over a period of 11 months. The learned Judge held that the plaintiff-respondent was entitled to damages for trespass and he made the following orders –

1) The defendants to pay the plaintiff by way of specific damages $42,000 for the loss of the sprinkler system, the pigsty, the chicken coop and the attap hut and a sum of $135,000 for the loss of vegetable produce on 2 acres of land for 3 years and 9 months at the rate of $3,000 per month.

2) The defendants to pay a sum of $150,000 to the plaintiff as damages for trespass.

3) The defendant's counterclaim for possession of the six acres of vegetable land is allowed.

4) The plaintiff to give up vacant possession of the six acres of land and to dismantle and remove his double storey house together with all the farm buildings which he has built on the land by July 31, 1986.